IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 555 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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CENTRAL BUREAU OF INVESTIGATION, GOVT OF INDIA

Versus

AMARJIT SINGH, THE THEN APPRAISER CUSTOMS

Appearance:

MR AMIT J SHAH for Petitioner No. 1

MR SV RAJU for Respondent No. 1

MR HH PATEL, PUBLIC PROSECUTOR for Respondent No. 2

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: /07/2001

C.A.V. JUDGEMENT

1. In this revision the order of Special Judge, Ahmedabad allowing the application of the accused no.3, who is respondent in this revision, is under challenge.

2. The said accused moved an application under sec.227 of the Code of Criminal Procedure for being discharged, inasmuch as, there was no sufficient ground for proceeding against him. The C.B.I. registered a case under secs.120-B, 420, 467, 468 and 471 of the Indian Penal Code and under sec.13(2) read with sec.13(1)(d) of the Prevention of Corruption Act, 1988 against five persons including the respondent. However, Harshad P.Mehta and Smt.HH Hingorani were not sent up for trial. Only three persons including the respondent were sent up for trial. The case of the respondent was that, there is no material or evidence against him on which he can be proceeded.

3. The application was resisted in the trial Court by the C.B.I., and after considering the material on record and submissions made by the respondent and the C.B.I., the trial Judge found that the respondent was not directly involved in the alleged offence, hence, he deserves to be discharged. Accordingly, he was discharged.

4. Feeling aggrieved, the C.B.I. has preferred this revision.

5. Shri Amit Shah, learned counsel for the C.B.I., Shri SV Raju, learned counsel for the respondent no.1 and Shri HH Patel, learned APP for the respondent no.2 were heard at length.

6. The contention of Shri Shah, learned Counsel for the revisionist has been that the trial Court committed error in discharging the respondent no.1, inasmuch as, it had no jurisdiction to sift the evidence and come to the conclusion that the witnesses were not reliable and that the charge would not ultimately succeed or that there was no evidence against the respondent no.1. According to him, at the stage of framing of the charge, the trial Court should have considered only this much, whether there was material for proceeding against the accused. In other words, if there is sufficient ground for proceeding against the accused, charges have to be framed and the accused can not be discharged. He has referred two cases in support of his contention.

7. In STATE OF MAHARASHTRA v. PRIYA SHARAN MAHARAJ 1997 CRI.L.J. 2248, the Supreme Court has held that, at the stage of framing of the charge the Court has to consider the material with a view to find out if there is ground for presuming that the accused has committed the

offence or that there is not sufficient ground for proceeding against him and not for the purpose of arriving at the conclusion that it is not likely to lead to a conviction.

8. In STATE OF M.P. v. S.B.JOHARI (2000) 2 S.C.C. 57, the Supreme Court has again held that, under sec.227 of the Code of Criminal Procedure, the Court has only to see whether prima facie there was sufficient ground for proceeding against the accused. The Court is not required to appreciate the evidence and arrive at a conclusion that the materials produced are sufficient or not for convicting the accused. If, the Court is satisfied that a prima facie case is made out for proceeding further, then a charge has to be framed. It can not appreciate the evidence to arrive at a conclusion in the matter.

9. As against this, Shri Raju has referred three judgments of the Supreme Court in support of his contention that the trial Court has limited jurisdiction to sift the evidence to find out, whether there are reasonable grounds for proceeding against the accused or not, and examination of evidence for this limited purpose is not prohibited.

10. The Apex Court, after examining number of earlier decisions given by it, made the following observations in UNION OF INDIA v. PRAFULLA KUMAR SAMAL & ANR. (1979)3 S.C.C. 4 :

1. That the Judge while considering the question of framing the charges under sec.227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

2. Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.

3. The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large, however, if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave

suspicion against the accused, he will be fully within his right to discharge the accused.

4. That in exercising his jurisdiction under sec.227 of the Code the Judge which under the present Code is a senior and experienced court can not act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

11. In SATISH MEHRA v. DELHI ADMINISTRATION & ANR. (1996)9 S.C.C. 766, the Apex Court again observed that, for the purposes of sec.227 of the Code, the Sessions Judge would be within his powers to consider even materials which the accused may produce at the stage contemplated in sec.227 of the Code. The Court has to find out, whether there was sufficient ground for proceeding against the accused. But, when the Judge is fairly certain that there is no prospect of the case ending in conviction, the valuable time of the Court should not be wasted for holding a trial only for the purpose of formally completing the procedure to pronounce the conclusion on a future date. Most of the Sessions Courts in India are under heavy pressure of workload. If, the Sessions Judge is almost certain that the trial would only be an exercise in futility or a sheer waste of time, it is advisable to truncate or snip the proceedings at the stage of sec.227 of the Code itself.

12. In STATE OF KARNATAKA v. L.MUNISWAMY & ORS. (1977)2 S.C.C. 699, the Supreme Court has held that, it is wrong to say that at the stage of framing charges the court can not apply its judicial mind to the consideration whether or not there is any ground for presuming the commission of the offence by the accused. The order framing a charge affects a person's liberty substantially and therefore it is the duty of the court to consider judicially whether the material warrants the framing of the charge. It can not blindly accept the decision of the prosecution that the accused be asked to face a trial.

13. Keeping in view, these guidelines laid down by the Apex Court in the cases referred to above, it has to

be seen by looking the material on record, whether there is reasonable ground for proceeding against the respondent no.1 or not.

14. After examining the impugned order and considering the submissions made by Shri Shah and Shri Raju, I find that the learned trial Judge was justified in discharging the respondent no.1.

15. It is not a case where there is any direct evidence against the respondent no.1 under secs.420, 467, 468 and 471 of the Indian Penal Code or under sec.13(2) read with sec.13(1)(d) of the Prevention of Corruption Act. I have also considered the material on record and found that there is no circumstantial evidence against the respondent no.1 on which he can be proceeded under these sections. Shri Shah contended that, for the purpose of criminal conspiracy under sec.120-B of the Indian Penal Code, there is evidence and the prosecution may be justified in producing evidence on this section, and if the prosecution succeeds in establishing the charge under sec.120-B of the Indian Penal Code, the respondent no.1 can suitably be convicted and sentenced.

16. To this, it can be said that at the stage of secs.227 and 228 of the Code of Criminal Procedure, the Court is required to evaluate the materials and documents on record with a view to finding out, if the facts emerging therefrom, taken on their face value, disclose the existence of all the ingredients constituting the alleged offence. The Court may, for this limited purpose, sift the evidence as it can not be expected even at the initial stage to accept all that the prosecution states as gospel truth, even if it is based on commonsense or the broad probabilities of the case. Even, for framing charge of conspiracy, there must be some material on which it can be proved. In most cases, it is based on circumstantial evidence. The Apex Court has also held so in the case of State of M.P. v. S.B.Johari (Supra). However, Shri Shah could not place before me even any circumstantial evidence which may furnish material or ground for proceeding against the respondent no.1 for conspiracy. There is no material worth the name regarding meeting of minds of the five accused or atleast the three accused including the respondent no.1, who have been sent up to face the trial.

17. On the face of it, the allegations against the accused seem to be very serious. It is alleged that they have defrauded the Customs to the tune of Rs.40,25,895=00 and attempted to cheat the department to the tune of

Rs.8,52,012=00. The allegation is that, out of nine consignments imported at Ahmedabad, eight were cleared without payment of Customs duty and the ninth consignment could not be cleared because of timely information given to the Customs at Ahmedabad. The ninth consignment contained Hydrazine Hydrate (imported) which was lying in possession of Customs. However, there is no material, direct or indirect, to show that the respondent no.1, in any way, defrauded or cheated the Customs Authorities. The entire material was meticulously examined by the trial Judge and the answers given by him are neither unreasonable nor illegal.

18. One of the allegations against the respondent no.1 is that, in the year 1992-93 while posted as Appraiser he introduced one Parid Shashikant Nanavati as Dipak Shah of Bombay to C.H.A. Smt.Hingorani. After considering the material on record, the trial Judge came to the conclusion that from the statements of the relevant witnesses, it is clear that Dipak Shah was not introduced personally by Amarjit Singh, respondent no.1. This was not appraisal of evidence, rather looking to the evidence to find out if there was material that the respondent no.1 introduced Parid Nanavati as Dipak Shah. There is also general allegation that bogus rubber stamp of Bank of Baroda was used in the said conspiracy and the accused had succeeded in getting the goods cleared from Customs without actual payment of Customs Duty. On this point, the statement of Girish Gajjar, who was running a printing press in the name and style of M/s.Gajjar Rubber Stamps was considered by the trial Judge and he found that rubber stamps were prepared by them in their workshop, which was delivered to one Niranjan Brahmbhatt, one of the accused. The name of Amarjit Singh, respondent no.1 did not figure in the statement of this witness. It is neither stated that the respondent no.1 placed order for preparation of rubber stamps or he collected the same. The trial Judge, therefore, rightly found that it can not be said that bogus rubber stamps were got prepared by Amarjit Singh, respondent no.1.

19. There is no evidence that, it was the case of under assessment by the respondent no.1, on account of which, loss was caused to the Customs Department. On the other hand, if any loss was caused, it was caused by the remaining two accused, who got prepared forged rubber stamps and without making actual payment of Customs duty got the consignments cleared. The fraud was detected at the stage of payment. There is no evidence that the respondent no.1 was having any bank account or that he was, in any way, connected with the fraud at the time of

payment. If there is no material to support the allegation that it was a case of under assessment by the respondent no.1, he can not be said to have either defrauded or cheated or entered in conspiracy to defraud or cheat the Customs Authorities.

20. Another allegation against the respondent no.1 is that, he told GM Trivedi and PB Tripathi in his absence that he had already seen the papers of the consignments and the assessment may be done quickly. It was also referred that one witness PK Mishra, A.C. confirmed that Amarjit Singh had given assurance that if any less charges are paid by the party, he will get it immediately paid from the party. The contention that these statements show some link between the accused and the respondent no.1 can not be accepted. For quick disposal of the papers or for quick assessment, the Supreme Court in Union of India V. Prafulla Kumar Samal (Supra) has also taken care of. It observed in para-23 that, as the appellant was naturally interested in finalizing the deal as quickly as possible, there could be no difficulty in finding out the estimates which had been sanctioned a week before respondent no.1 wrote the letter to the Vigilance Department. This fact proved the bonafide rather than any wrongful conduct on the part of respondent no.1 which may lead to an adverse inference being drawn against him. Thus, if Amarjit Singh had told GM Trivedi and PB Tripathi to make the assessment done quickly, it shows his bonafide and not otherwise. Since, he had already seen the papers, he had made such statement to these two witnesses. Since, Amarjit Singh can not be said to be guilty of under assessment, this statement made by the two witnesses does not give any adverse inference, on which Amarjit Singh can be proceeded for entering into conspiracy to defraud the Customs.

21. Likewise, if Amarjit Singh gave assurance that, if any less charges are paid by the party, he will get immediately paid from the party, it reflects his bonafide and not links with the party or the other accused. This statement shows that he had confidence over the party and that there would be no chance of fraud being committed by the party on the Customs Department.

22. Statements of GM Trivedi and PK Mishra were referred before me. After going through their statements, I do not find anything incriminating, on which charges can be framed against the respondent no.1.

23. Similarly, the trial Judge found that there is no

specific evidence that Dipak Shah was personally introduced by the respondent no.1 to Smt.Hingorani, and after considering the statement of Smt.Hingorani and the so-called telephonic conversation, he found that Dipak Shah was not introduced personally by Amarjit Singh. This is not a finding of fact, but sifting of evidence to find out, whether there was material to proceed against the respondent no.1 on the charge of conspiracy.

24. No doubt, in para-10 of the order, the trial Judge observed that the statement of GM Trivedi is not believable, but this does not render the entire order illegal or invalid. The trial Judge should not have entered into exercise, whether the witness is believable or not, at the time of framing of charge. Even if, the witnesses stated that in his absence the respondent no.1 told them to carry out assessment of three or four bills quickly, it does not amount to any material to frame charge of conspiracy. This aspect has been discussed above at length with reference to the observations of the Apex Court's verdict on this subject.

25. Regarding the charge under the Prevention of Corruption Act, the trial Judge found that except bare allegation in the FIR that Amarjit Singh had 'benami' immovable and movable properties like Maruti Car, Video Camera, etc., there was no material that he or his near relatives are in possession of the said properties and the names of the real relatives were not shown in the FIR, nor any material was collected during investigation carried out by the C.B.I. There is also no material to indicate that the respondent no.1 had purchased 'benami' immovable properties and his standard of living is high as compared to his salary or he is possessed of assets disproportionate to his disclosed sources of income.

26. There is evidence that one Niranjan Brahmbhatt signed almost all the papers pertaining to nine consignments in different names, but there is no such evidence against the respondent no.1. There is no material that any document was surreptitiously signed by the respondent no.1.

27. Shri Shah contended that the trial Judge found that the respondent no.1 is not directly involved in the alleged offence, which does not rule out indirect involvement of the respondent no.1, and as such, he can be charged under sec.120-B of the Indian Penal Code. I am unable to accept this contention. The observation of

the trial Judge in para-18 on this point may not be happily worded.

28. From the foregoing discussions, it is found that there is no material, direct or indirect or in the nature of circumstantial evidence to proceed against the respondent no.1 on any of the charges for which he has been sent up to face the trial. The trial Judge, therefore, committed no illegality in discharging the respondent no.1. I, therefore, do not find any ground for interference in this revision. The revision is accordingly dismissed.

Dated : __/07/2001. (D.C. Srivastava, J.)

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